



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/EV/23/0771

Re: Property at 30 Peden Avenue, Dalry, KA24 4BB (“the Property”)

Parties:

Mr Brian Frew, 21 Adams Avenue, Northampton, NN1 4LQ (“the Applicant”)

Mr Alan Ray, 30 Peden Avenue, Dalry, KA24 4BB (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 30 Peden Avenue, Dalry, KA24 4BB under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application for eviction in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. A Case Management Discussion (“CMD”) was held on 7 November 2023. The Applicant was represented by Ms McDiarmid from Hovepark Lettings. Mr Ray the Respondent appeared on his own behalf.

3. After hearing parties' submissions, the Tribunal determined that the CMD should be continued to give the Respondent an opportunity to make enquiries and seek advice on whether he was entitled to further Universal Credit or other benefits such as Discretionary Housing payment to take account of the fact his daughter was now living with him. The Tribunal suggested the Respondent should urgently seek professional advice to explore the prospects of an additional payment from the Department of Work and Pensions or North Ayrshire Council, or any other source, towards the rent arrears. Further the Tribunal continued the CMD to allow the Respondent to make a repayment arrangement for the arrears with Hovepark Lettings. The Tribunal made it clear to the Respondent that it was his responsibility to do so and to keep in contact with Hovepark Lettings. The Note from the CMD is referred to.
4. On 20 December 2023 the Tribunal issued a Notice of Direction. The Applicant was required to lodge an up to date rent statement and all correspondence with the Respondent relating to rent arrears since December 2022 to date. The Respondent was required to lodge all documents showing that he had advised Universal Credit of his change in circumstances, and which show his current entitlement to Universal Credit Housing Payment. The Respondent was also required to lodge all documents which showed he had taken advice from the Department of Work and Pensions or North Ayrshire Council, or any other source, with regards to additional benefits he may be entitled to and evidence of what that advice was. Parties were asked to submit these documents by 29 January 2024.
5. On 21 December 2023, Ms McDiarmid from Hovepark Lettings lodged an up to date rent statement to 12 December 2023 and a timeline of events. These were sent to the Respondent on 21 December 2023. The Respondent did not lodge any documents in terms of the Notice of Direction by 29 January 2024.
6. On 22 December 2023 the Tribunal advised both parties that the continued CMD would proceed on 12 February 2024.

Continued Case Management Discussion

7. The continued CMD took place by teleconference call on 12 February 2024. The Applicant was again represented by Ms McDiarmid from Hovepark Lettings. There was no appearance by or on behalf of the Respondent despite the CMD starting 5 minutes late to give him plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
8. The Tribunal had before it a copy of an AT5 dated 21 October 2014, a Short Assured Tenancy Agreement between the parties starting 24 October 2014, a Notice to Quit and Notice under S33 of the Housing (Scotland) Act 1988 both dated 1 December 2022, Royal Mail proof of service dated 16 December 2022, letters from Hovepark Lettings the Applicant's agent to the Respondent dated 29 August 2022, 10 October 2022 and 31 January 2023, a rent

statement to 12 December 2023, a timeline of events and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 dated 9 March 2023 with covering email to North Ayrshire Council. The Tribunal considered these documents.

9. Ms McDiarmid moved the Tribunal to grant an order for eviction. She submitted that although the arrears had come down the Applicant felt the relationship with Mr Ray had broken down. Arrears were £1304.10 with another month's rent now due. With reference to the rent statement, she explained that the Respondent had unexpectedly made a payment of £500 on 20 November 2024 and an arrangement to pay £50 per month. He made payments of £50 on 12 December 2023 and the 12 January 2024. The Respondent made another £500 payment on 12 January 2024. She submitted that it was difficult to communicate with the Respondent. He claims to have no email address, wifi or phone. He ignores letters they send to him and they have to go to the Property to attempt to communicate with him. She submitted he had a large TV and games console at the Property and submitted that he must have at least an email address and wifi to game.
10. On being questioned by the Tribunal she confirmed the arrears had started to arise from April 2022. At that time, she understood the Respondent had either lost his job or given it up. Between July – November 2022 the Respondent paid nothing although he was in receipt of Universal Credit. Ms McDiarmid then applied for direct payments and started to receive £350 per month towards the rent of £400. They also received arrears direct of £33.49. This has increased to £36.87.
11. Ms McDiarmid explained they had visited the Respondent at least twice since the last CMD. There has never been any sign of his daughter living there. She understood he had access to his daughter but that she did not live with him. She explained that she is concerned the Respondent is not forthcoming and that there is a lack of communication. She appreciated that when his father died, the Respondent struggled with his mental health. There was no co-operation from the Respondent to improve communication. The concern is that without the Tribunal's intervention the Respondent will not pay anything towards the arrears or his full rent. It was unclear how someone who claimed to only have a small amount of money left over every week to feed himself and his daughter was able to make two payments in the last couple of months of £500. He was not getting his full rent paid from Universal Credit. There is also a concern that going forward there is uncertainty that he would be able to meet any increase in rent which has not increased since the start of the tenancy in 2014.

Findings In Fact

12. The Applicant and the Respondent entered into a Short Assured Tenancy on 24 October 2014. The Respondent received an AT5 on 21 October 2014.

13. In terms of clause 3 of the Short Assured Tenancy Agreement the tenancy commenced 24 October 2014 until 24 April 2015, the end date. Parties agreed that if the agreement was not brought to an end by either party on the end date it would continue thereafter on a monthly basis until terminated.
14. In terms of clause 4 of the Short Assured Tenancy Agreement the Respondent agreed to pay rent of £400 per month. The rent has not increased since the commencement of the tenancy and is still £400 per month.
15. The Respondent started to accrue arrears from April 2022. The Respondent has been in arrears of rent ever since. The Respondent is in arrears of £1304.10.
16. The Respondent is in receipt of Universal Credit. Between July – November 2022 the Respondent received Universal Credit but did not make any payments towards rent.
17. The Applicant's agent Hovepark Lettings wrote to the Respondent regarding his arrears on 29 August 2022 and 10 October 2022. The Respondent ignored the letters
18. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the Housing (Scotland) Act 1988 both dated 1 December 2022 on the Respondent by Recorded Delivery. The Notice to Quit and the Section 33 Notice expired on 24 February 2023.
19. The Short Assured Tenancy reached its end as at 24 February 2023.
20. *Tacit relocation* is not operating. The contractual Short Assured Tenancy had been brought to an end on 24 February 2023.
21. The Applicant receives £350 per month direct payment towards the rent of £400.
22. The Applicant currently receives £36.87 arrears direct.
23. The Respondent made a payment of £500 on 20 November 2023. The Respondent paid £50 on 12 December 2023 and on 12 January 2024. The Respondent made another payment of £500 on 12 January 2024.
24. The Respondent remains in the Property. He lives alone.
25. There are no outstanding benefits' issues.
26. The Applicant's agent served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on North Ayrshire Council on 9 March 2023.

Reasons for Decision

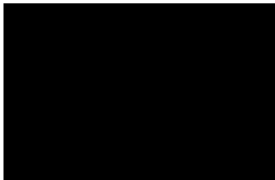
27. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by Ms McDiarmid at both the CMD and the continued CMD and by the Respondent at the CMD. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its ish (termination date) on 24 February 2023; the Notice to Quit brought the contractual Short Assured Tenancy to an end on 24 February 2023 and that the Applicant had given the Respondent notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required by 24 February 2023.
28. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal considered that the Applicant's agent had written to the Respondent prior to raising proceedings in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 and that the Respondent had ignored their attempts to engage with them. The Tribunal accepted Ms McDiarmid's submission that without the intervention of the Tribunal, Hovepark Lettings had not received any payments from the Respondent toward his arrears. The Tribunal accepted that communication with the Respondent was difficult and that he ignored all attempts by Hovepark Lettings to improve communication. It appeared to the Tribunal that despite the submissions he had made at the CMD the Respondent had ignored the Notice of Direction to produce documentation which may have assisted his own position to show that with his daughter living there he was entitled to further benefits to help clear the arrears. The Tribunal also considered he had not engaged any further with the Tribunal process. The Tribunal accepted Ms McDiarmid's submission that the Applicant felt the relationship with the Respondent had broken down and that there was a real concern about the management of the Property and the Respondent's ability to pay rent, particularly if that was increased. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
29. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 as amended it was reasonable to grant an eviction order.

Decision

30. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.



Shirley Evans
Legal Chair

17 February 2024
Date